

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11843 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SOLANKI KISHORSINH GAGABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11843 of 2003
MS MAMTA R VYAS for Petitioner No. 1
MR PRADIP BHATE A.G.P. for Respondent No. 1-2
RULE SERVED BY DS for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 28/04/2004

ORAL JUDGEMENT

The petitioner has approached this Court praying
that writ of mandamus be issued directing the respondents

to consider the application of the petitioner for compassionate appointment and pursuant to the said application to grant him appointment in respondent no. 3 institution.

1.1. Father of the petitioner late Shri Gagabhai Umedbhai Solanki was appointed as Senior Clerk in the year 1966 in respondent no. 3 school. He expired on 11th December, 1997 while in service. The petitioner since he was qualified for, made an application for compassionate appointment. He submitted an application on 1st January, 1998. The application was submitted to respondent no. 3, which in turn forwarded to the District Education Officer ["D.E.O." for short]. The D.E.O. after scrutinising the relevant record relating to the petitioner, called for some additional information which was also supplied to him by respondent no. 3. Further respondent no. 3 by letter dated 21st September, 1998 intimated the D.E.O. its no objection to the appointment. However, the D.E.O. refused to accede to the request of the petitioner on the ground that his family income was more than Rs.2,500=00 and, therefore, he could not be eligible for compassionate appointment, in view of condition no. 3 of the Government Resolution dated 4th July, 1988. Later on the State Government vide Resolution dated 7th September, 2002, dispensed with clause imposing ceiling limit. In view thereof, the petitioner became entitled to have appointment on the ground of compassion. The petitioner, therefore, submitted another application requesting for reconsideration of his earlier application for compassionate appointment. That application was made on 16th October, 2002. Since no action was taken for considerable time on the said application, the petitioner has filed this petition under Article 226 of the Constitution of India.

2. It appears from the record of the petition that by virtue of the order dated 1st October, 2003, respondent no. 4 - Commissioner of Education, was joined as party to the proceedings.

2.1. On 30th January, 2004, this Court [Coram Ravi R. Tripathi, J.] gave the following direction :-

"In view of the aforesaid submissions, it is clarified that the pendency of this petition shall not restrain the authorities from passing an order in accordance with law. The matter be listed on 10th February, 2004."

2.2. However, till this date no action seems to have been taken from any quarter.

3. In view of the aforesaid, respondents nos.1, 2 and 4 are directed to accord their approval to the compassionate appointment to be made by respondent no. 3 in its school. This direction is being given particularly in view of the statement contained in affidavit-in-reply filed on behalf of respondent no. 2 by Education Inspector to the effect that :-

"It is submitted that at present three posts of peons have been filled up and one post of peon in Class-IV of the school is vacant. It is submitted that under the circumstances, the petitioner is entitled to get appointment on compassionate ground. A proposal has been sent to the Commissioner of Mid-day Meals & Schools, Gandhinagar on 29th September, 2003, vide letter No.K/6/MKM/03-04.

In view of the aforesaid facts and circumstances of the case, appropriate order may pleased be passed according to Rules and petition be disposed of."

3.1. Thus, respondents nos. 1, 2 and 4 are directed to accord necessary approval on or before 31st July, 2004. Upon receiving the approval, respondent no. 3 will within a period of one week from that date grant appointment to the petitioner on the post of peon in Class-IV service.

With this direction, the petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

/phalguni/